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## HOW WILL HEALTH CARE REFORM AFFECT SENIORS AND PEOPLE WITH SPECIAL NEEDS?

On March 23, 2010, President Obama signed a comprehensive health care reform bill (H.R. 3590) into law. On March 25, Congress passed the Reconciliation Act of 2010 (H.R. 4872), which modifies H.R. 3590. Below, we highlight significant provisions of H.R. 3590 and H.R. 4872, which together comprise the health care reform package. Future issues of the *ElderLaw Advisor* will provide a more detailed explanation of reform provisions related to Medicare, Medicaid, and long-term care.

### MEDICARE

- Gradually eliminates the Medicare Part D doughnut hole by 2020:
- For brand-name drugs, **require pharmaceutical manufacturers to provide a 50 percent discount on prescriptions** filled in the Medicare Part D coverage beginning in 2011, in addition to federal subsidies of 25 percent of the brand-name drug cost by 2020 (phased in beginning in 2013).
- For generic drugs, **provide federal subsidies of 75 percent of the generic drug cost by 2020** for prescriptions filled in the Medicare Part D coverage gap (phased in beginning in 2011).
- Provides a \$250 rebate to Medicare beneficiaries who reach the Part D coverage gap

in 2010 (effective January 1, 2010).

- Provides Medicare coverage, with no co-payment or deductible, of an **annual wellness visit and creation of a personalized prevention assessment and plan**. Prevention services include referrals to education and preventive counseling or community-based interventions to address risk factors.
- **Eliminates Part D cost-sharing for full-benefit dual eligible beneficiaries receiving home- and community-based services.**
- **Restructures payments to Medicare Advantage (MA) plans** by setting payments to different percentages of Medicare fee-for-services (FFS) rates, with higher payments for areas with low FFS rates and lower payments (95 percent of FFS) for areas with high FFS rates. Phases-in revised payments over three years beginning in 2011, for plans in most areas.
- Requires the Secretary to suspend MA plan enrollment for three years if the medical loss ratio is less than 85 percent for two consecutive years and to terminate the plan contract if

*"The greatest wealth is health."*

*- by Virgil, Greek Philosopher*



JOHN NALE

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the medical loss ratio is less than 85 percent for five consecutive years (effective beginning in 2011).

- Although these provisions cut MA payments, there are no provisions for cuts to mandated benefits. As a result of the payment reductions, MA plans may cut extra, optional benefits such as vision and dental.
- These and other provisions strengthen Medicare and **extend by nine years the life of the Medicare Trust Fund** which, without some intervention, was projected to be depleted in 2017.

#### **On the negative side, H.R. 3590:**

- Establishes an **Independent Payment Advisory Board**, which will have authority to make recommendations for Medicare cost-savings. The recommendations will take effect if Congress does not enact an alternative proposal that achieves the same cost savings. The board cannot make any recommendations that will impact premiums or benefits. Also, the board cannot make any recommendations for cuts in a year when national health expenditures grow at a higher rate than Medicare costs.
- **Ties Medicare Part D premiums to income**, and will move more Part B and Part D beneficiaries into higher-income categories – meaning higher premiums – due to a freeze on thresholds.

### **INSURANCE MARKET REFORM**

- Effective six months from enactment, **insurance companies can no longer deny children coverage based on a preexisting condition**.
- Starting in 2014, **insurance companies cannot deny coverage to anyone with preexisting conditions**.
- Effective six months after enactment, requires individual and group plans to **extend dependent coverage to adult children up to age 26**, prohibits rescissions of coverage, and eliminates waiting periods for coverage of greater than 90 days.

### **MEDICAID**

- **Modifies the spousal impoverishment statute** to mandate that states include the spousal impoverishment protections in their

waiver programs, and that the spouse of all HCBS waiver participants, including those who qualify as medically needy, have the protections available. This provision will sunset after five years.

- **Establishes the Community First Choice Option**, a state plan option to provide community-based attendant supports and services to individuals with disabilities who are Medicaid eligible and who require an institutional level of care. States that choose the Community First Choice Option will be eligible for an enhanced federal match rate of an additional six percentage points for program expenses. This provision will sunset five years after it starts on October 1, 2011.
- **Creates the State Balancing Incentive Program** (October 1, 2011 – September 30, 2015) to provide enhanced federal Medicaid matching to states that currently spend less than 50 percent of total expenditures for long-term care on services in the home or community to increase their proportion to non-institutionally-based long-term care services.
- Expands Medicaid to **cover individuals 64 and under with incomes up to 133 percent of the federal poverty line**.

### **LONG-TERM CARE**

- **Establishes the Community Living Assistance Services and Supports (CLASS) program**, a new, national long-term care insurance program funded through voluntary payroll deductions, which will provide a cash benefit to individuals who are unable to perform ADLs for the purchase of long-term care services and supports.
- Allocates \$10 million per year for five years to **continue the Aging and Disability Resource Center initiatives**.

### **CARE COORDINATION**

- **Creates the Independence at Home demonstration program** to provide high-need Medi-

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care beneficiaries with primary care services in their homes and allow participating teams of health professionals to share in any savings if they reduce preventable hospitalizations, prevent hospital readmissions, improve health outcomes, improve the efficiency of care, reduce the cost of health care services, and achieve patient satisfaction.

- **Creates an Innovation Center at the Centers for Medicare and Medicaid Services** to test, evaluate, and expand different Medicare and Medicaid payment structures to foster patient-centered care and care coordination across treatment settings and slow cost growth.
- **Establishes a Medicare Shared Savings Program** that promotes accountability for a patient population and coordinates services under Medicare parts A and B, and will encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery. It will allow groups of providers who voluntarily meet certain criteria to work together to manage and coordinate care for **Medicare fee-for-service beneficiaries through Accountable Care Organizations (ACOs)** under Medicare. ACOs that meet quality performance standards are eligible to receive payments for shared savings if costs are a certain percentage below a benchmark.
- **Establishes a national Medicare pilot program** to develop and evaluate paying a bundled payment for an episode of care that begins three days prior to a hospitalization and lasts 30 days following discharge.
- **Creates a new Medicaid state plan option under which Medicaid enrollees with chronic conditions** (including a mental health condition, substance use disorder, asthma, diabetes, heart disease, or weight problem) can designate a provider, team of health care professionals, or a health team as their health home.

## END-OF-LIFE

- No end-of-life provisions are included in H.R. 3590.

## NURSING HOME TRANSPARENCY

- **Requires nursing homes to disclose their owners, operators, suppliers, financiers, and others with whom they do business** so they can be held accountable for the care their residents receive.
- **Requires the government to implement a system to collect and report information about how well nursing homes are staffed**, including accurate information about the hours of nursing care residents receive; staff turnover rates; and how much facilities spend on wages and benefits.
- **Requires cost reports** that nursing homes will file with the government to show expenditures by category – nursing, therapy, capital assets, and administrative services.
- **Requires civil monetary penalties (fines) to be held in escrow** pending appeals rather than allowing nursing homes to delay payment indefinitely while they file appeals.
- **Provides training to workers** who care for residents with dementia and to prevent abuse.

## ELDER JUSTICE

- Establishes an **Elder Justice Coordinating Council** to make recommendations to the Secretary of Health and Human Services on the coordination of activities of federal, state, local and private agencies and entities relating to elder abuse, neglect, and exploitation. Recommendations are due in two years.
- Provides \$400 million in first time dedicated funding for **Adult Protective Services (APS)**.
- Provides \$100 million for **state demonstration grants** to test a variety of methods to detect and prevent elder abuse.
- Provides \$26 million for the establishment and support of **Elder Abuse, Neglect, and Exploitation Forensic Centers** to develop

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### *Special Edition*

### JUNE ISSUE ARTICLES:

- How Will Health Care Reform Affect Seniors and People With Special Needs?

forensic expertise and provide services relating to elder abuse, neglect, and exploitation.

- Provides \$32.5 million in **grants to support the Long-Term Care Ombudsman Program** and an additional \$40 million in training programs for national organizations and state long-term care ombudsman programs.
- Authorizes \$67.5 million in **grants to enhance long-term care staffing** through training and recruitment and incentives for individuals seeking or maintaining employment in long-term care, either in a facility or a community based long-term care entity.

### CRIMINAL BACKGROUND CHECKS

- Extends to all states an existing pilot program that enables states to **conduct national criminal background checks**, including fingerprint checks, on individuals who apply for direct patient access jobs in long-term care facilities and with home care agencies that receive funding from Medicare or Medicaid.

### WORKFORCE

- Authorizes \$10.8 million to **Geriatric Education Centers (GECs) to support training in**

**geriatrics**, chronic care management, and long-term care for faculty in a broad array of health professions schools, and direct care workers and family caregivers.

- Establishes federal traineeships for individuals who are **preparing for advanced education degrees in geriatric nursing, long-term care, and gero-psychiatric nursing.**
- Provides **grants to foster greater interest among health professionals** (advanced practice nurses, clinical social workers, pharmacists, and students of psychology) to enter the field of geriatrics, long-term care, and chronic care management.
- **Establishes a national panel of long-term care workforce experts** to develop the core competencies for these training programs and to take recommendations on how much training could be provided.

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